

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:HMT:CLE:POSTF-152221-01
RSBloom

date: October 29, 2001

to: LM:FSH:1185
Independence, OH
Attn: Ronald J. Shepherd

from: Associate Area Counsel, LM:MCT:CLE

subject: Advisory Opinion: Taxpayer to be identified on Forms 872

Taxpayer: [REDACTED]
EIN: [REDACTED]
Year: [REDACTED]
Taxpayer: [REDACTED]
EIN: [REDACTED]
Years: [REDACTED], and [REDACTED]

As you were advised in our memorandum dated October 16, 2001, our advice with respect to your request regarding the taxpayer name, address and EIN to be used on Forms 872 was subject to 10-day post review by our National Office. This review has been completed, and the National Office agreed with our analysis and conclusions, but set forth its standard approach for the format of the taxpayer's name.

The National Office response states, in relevant part,

Although we agree with your proposed format for the name to be used on Form 872 for the taxable years ending [REDACTED] and [REDACTED], our standard approach would be as follows: [REDACTED] (EIN [REDACTED]), formerly [REDACTED] common parent of the [REDACTED] (EIN [REDACTED]) [REDACTED] consolidated group.* At the bottom of the first page of Form 872, we recommend that the asterisk be followed by the following: *This is with respect to the [REDACTED] consolidated group for the taxable years ending [REDACTED] and [REDACTED].

* * *

Once again, although we agree with your proposed format for the name to be used on Form 872 for the taxable year ending [REDACTED], our standard approach would be as follows: [REDACTED] (EIN [REDACTED])

██████████), formerly ██████████, common parent of the ██████████ (EIN ██████████) ██████████ consolidated group.* At the bottom of the first page of Form 872, we recommend that the asterisk be followed by the following: *This is with respect to the ██████████ consolidated group for the taxable year ending ██████████.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Also, if you have any questions regarding the above, please feel free to contact the undersigned at 216-522-3380 (ext. 3108).

JOSEPH F. MASELLI
Area Counsel
(Heavy Manufacturing and
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By: _____
RICHARD S. BLOOM
Associate Area Counsel
(Large and Mid-Size Business)

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EIN: [REDACTED]
Year: [REDACTED]
Taxpayer: [REDACTED]
EIN: [REDACTED]
Years: [REDACTED], and [REDACTED]

This memorandum responds to your request of September 25, 2001, regarding the taxpayer name, address and EIN to be used on Forms 872 after the taxpayers have undergone numerous ownership, name and address changes. This memorandum should not be cited as precedent. The advice contained in this memorandum is subject to 10-day post review by our National Office and, therefore, is subject to modification.

ISSUE

What taxpayer name, address and EIN should be used on Forms 872 after the taxpayers have undergone numerous ownership, name and address changes.

CONCLUSION

For the taxable year ended [REDACTED], of [REDACTED], the consent should reflect the

¹Based upon the information provided, it appears that only one tax return was filed by [REDACTED] (EIN: [REDACTED]) for the taxable year ended [REDACTED]. If this information is incorrect, please advise immediately, because the language suggested for the consent for the taxable year ended [REDACTED], will have to be revised.

following as the name of the taxpayer: "[REDACTED] (EIN: [REDACTED]) [REDACTED], formerly known as [REDACTED] (EIN: [REDACTED]) [REDACTED]." For the sake of clarity, the foregoing name should be asterisked, as indicated, and at the bottom of the consent after the asterisk the following language should be inserted: "* With regard to the consolidated tax liability of the [REDACTED] (EIN: [REDACTED]) [REDACTED] consolidated group for the group's taxable year ended [REDACTED]." The consent, at the top right-hand corner, should reflect the EIN: [REDACTED]. The consent should reflect the current address of the taxpayer which is now known as [REDACTED]. The consent should be signed by a current officer of the current [REDACTED], under the corporate name "[REDACTED], formerly known as [REDACTED]."

For the taxable years ended [REDACTED] and [REDACTED] of [REDACTED], the consent should reflect the following as the name of the taxpayer: "[REDACTED] (EIN: [REDACTED]) [REDACTED], formerly known as [REDACTED] (EIN: [REDACTED]) [REDACTED]." For sake of clarity, the foregoing name should be asterisked, as indicated, and at the bottom of the consent after the asterisk the following language should be inserted: "* With regard to the consolidated tax liabilities of the [REDACTED] (EIN: [REDACTED]) [REDACTED] consolidated group for the group's taxable years ended [REDACTED] and [REDACTED]." The consent, at the top right-hand corner, should reflect the EIN: [REDACTED]. The consent should reflect the current address of the taxpayer which is now known as [REDACTED]. The consent should be signed by a current officer of [REDACTED], under the corporate name "[REDACTED], formerly known as [REDACTED]."

FACTS

[REDACTED], (EIN: [REDACTED]), was incorporated [REDACTED]. [REDACTED], was the common parent of a group of corporations that filed a consolidated Federal income tax return for the taxable years ended [REDACTED] and [REDACTED]. In [REDACTED], [REDACTED], through Certificate of Amendment of Certificate of Incorporation, changed its name to [REDACTED].

[REDACTED] (EIN: [REDACTED]) was

incorporated [REDACTED]. [REDACTED] was the common parent of a group of corporations that filed its Federal income tax returns on a calendar year basis. [REDACTED] was a wholly owned subsidiary of [REDACTED]. On [REDACTED], pursuant to an agreement and plan of merger, [REDACTED] merged into [REDACTED], in an I.R.C. § 368(a)(2)(E) reorganization. [REDACTED], survived as a wholly owned subsidiary of [REDACTED]. The former shareholders of [REDACTED], as a result of the reorganization, ended up owning approximately [REDACTED] of [REDACTED].² [REDACTED] changed its name to [REDACTED].³ [REDACTED], and its subsidiaries filed a consolidated Federal income tax return for the taxable year beginning [REDACTED] and ending [REDACTED].⁴ A consolidated Federal income tax return for the short taxable year [REDACTED] to [REDACTED], was also filed by [REDACTED].⁵ In [REDACTED], after [REDACTED], changed its name to [REDACTED], [REDACTED] changed its name to [REDACTED].⁶ [REDACTED], formerly known as [REDACTED] filed a consolidated Federal income tax return for the calendar year 1999. Both [REDACTED] (EIN: [REDACTED]) and [REDACTED]

-The transaction qualifies as a reverse acquisition under Treas. Reg. § 1.1502-75(d)(3)(i)(a).

³The name change was effectuated under Delaware law (section 253 of the General Corporation Law) through a name change merger. [REDACTED], a subsidiary of [REDACTED], was merged with and into [REDACTED] under the name [REDACTED].

⁴It appears that this return was filed for [REDACTED]'s old consolidated group for the period from [REDACTED] to the merger (reverse acquisition).

⁵It appears that this return was filed for old [REDACTED]'s group which survived the merger (reverse acquisition). The return also appears to include, for the period after the merger to the end of the calendar year, the corporations which were part of [REDACTED]'s group which group ceased to exist after the merger.

⁶The name change was again effectuated through a name change merger. See footnote 3, above.

[REDACTED] (EIN: [REDACTED]) are still in existence.

In [REDACTED], a Form 872, Consent to Extend the Time to Assess Tax, was executed for the taxable year ended [REDACTED] by [REDACTED] (formerly [REDACTED]). The EIN identified at the top right-hand corner of the consent was [REDACTED]. The consent extended the time in which to assess to [REDACTED]. The taxpayer(s) and the Service wish to extend the statute of limitations on assessment to [REDACTED] with respect to the taxable years ended [REDACTED], [REDACTED], and [REDACTED].

ANALYSIS

I.R.C. § 1501 grants affiliated groups of corporations the privilege of filing returns on a consolidated basis. If consolidated returns are filed, the members of the group consent to be bound by the legislative regulations promulgated pursuant to the authority in I.R.C. § 1502.

Under Treas. Reg. § 1.1502-77(a), the common parent of the consolidated group is the sole agent for each subsidiary in the group and duly authorized to act in its own name in all matters relating to the consolidated tax liability of the group. The common parent remains the agent for the members of the group for any years during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. An agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax of a consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. § 1.1502-77(c).

Since [REDACTED], is still in existence, albeit operating under a different name ([REDACTED]), the rule under Treas. Reg. § 1.1502-77(a) applies, and the corporation

⁷This fact must be verified through contact with officers of the corporations. If either or both corporations are no longer in existence, please contact our office immediately and we will provide revised advice.

⁸It is our understanding that a consent is not being sought for the taxable year beginning [REDACTED], and ending [REDACTED], of [REDACTED].

([REDACTED], formerly [REDACTED]) should execute the consent for the consolidated group's tax liability for the taxable year ended [REDACTED]. Likewise, since [REDACTED], is still in existence, albeit operating under a different name ([REDACTED]), Treas. Reg. § 1.1502-77(a) is applicable, and the corporation ([REDACTED], formerly [REDACTED]) should execute the consent for the consolidated group's tax liability for the taxable years ended [REDACTED] and [REDACTED].

[REDACTED], formerly [REDACTED], as the new common parent of the old [REDACTED], group³ also qualifies as an agent for the members of the old [REDACTED] group for pre-reverse acquisition years and could execute the consent on behalf of the group. See, Southern Pacific Co. v. Commissioner, 84 T.C. 395, 404 (1985) (new common parent held to be agent for the group after old common parent ceased to exist following a reverse acquisition); Union Oil Company of California v. Commissioner, 101 T.C. 130, 139-40 (1993) (Court concluded that new common parent is also an agent for the group even where the old common parent remained in existence and affiliated with the group after a reverse acquisition).⁴ However, we strongly suggest that the consent for the years ended [REDACTED], and [REDACTED], be obtained from [REDACTED], formerly [REDACTED], since the prior consent for the year ended [REDACTED], (extending the time to assess to [REDACTED]) was so obtained.

³Under Treas. Reg. § 1.1502-75(d)(3), [REDACTED]'s group that existed before the reverse acquisition ceases to exist and [REDACTED]'s group is treated as remaining in existence with [REDACTED] as its common parent.

⁴See also, Treas. Reg. § 1.1502-77T(a)(3) and (4)(iv) which allows [REDACTED], formerly [REDACTED], to act as alternative agent for the old [REDACTED], group for purposes of executing a consent to extend the statute of limitations on assessment.

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